PUBLIC PROSECUTOR

v.

SAYIDINA ALI IBIE & ORS.

HIGH COURT, BANDAR SERI BEGAWAN
DENYS ROBERTS CJ
[CIVIL TRAIL NO. 8 OF 1988]
12 JANUARY 1989

CRIMINAL PROCEDURE: *Section 489(B) & (C) of the Penal Code - Only evidence is a statement made to a police officer - Admitted as voluntary - Certain parts disputed - Weight to be given - Section 489(B) or (C) requires prosecution to show that the defendant knew or had reason to believe the notes to be forged - Sentence - Distribution of forged currency - A serious matter - Credit to the defendant for assisting the police - Pleading guilty at the earliest opportunity.*

The defendants were charged under s. 489(B) of the Penal Code and in the alternative under s. 489(C) of the same Code. The only evidence against the 2nd defendant (D2) was his own statement made to a police officer. The statement was admitted as voluntary. But D2 disputed certain parts of the statement. The issue before the Judge was whether there was a case to answer in respect of the 2nd defendant (D2).

As regards the 1st and 3rd defendants, the Judge had to consider the question of sentence, after the defendants had pleaded guilty.

Held:

[1] Although the statement given to a police officer was admitted as voluntary, very little weight was given to it by reason of the fact that the defendant's ability to read and understand Malay was very limited.

[2] Section 489(B) or s. 489(C) of the Penal Code requires the prosecution to show, in each case, that the defendant knew or had reason to believe the notes to be forged.

[3] In considering sentence, the Court can give proper credit to the defendant for the fact *inter alia* that he had been of assistance to the police and pleaded guilty from the outset.

[4] There was no case to answer in respect of the 2nd defendant and he was discharged accordingly. The 1st and 3rd defendants were sentenced to 2½ years' and 4½ years' imprisonment respectively.

Legislation referred to:
Penal Code [Brunei] s. 489(B), (C)

For the state - Zabaidah, DPP
For the 2nd defendant - David Clidero; M/s. Clidero & Lee
For the 3rd defendant - Norila Abu Hassan; M/s. Yu & Co.
For the 1st defendant - unrepresented

JUDGMENT

Denys Roberts CJ:

The second defendant (D2), Duraman bin Hussin, has submitted that no case has been put forward by the Public Prosecutor such as will call for an answer by him.

D2 is charged with an offence contrary to s. 489(B) of the Penal Code, the maximum punishment for which is 15 years.

As an alternative, he faces a charge of possession of forged currency notes, amounting to B$3,900 in April 1988, contrary to s. 489(C) of the Penal Code, the maximum punishment for which is 7 years.

The evidence, given by the prosecution witnesses, has satisfied me beyond reasonable doubt and that is a burden which never shifts from the prosecution in relation to all constituents of the offences charged, that the notes which were sent for examination by Mrs. Ng in Singapore were, with the exception of two specimen genuine ones, forged notes.

I am also satisfied that these notes were retrieved from the first and third defendants on 14 and 15 May 1988. However, the evidence against them of their possession of forged currency, in May 1988, does not implicate D2.

The only evidence against D2 is that of his own statement, made to a police officer on 13 June 1988. I admitted this statement as a voluntary one, after challenge by the defence.

D2, who gave evidence on his own behalf, agreed that the statement was made by him as alleged, but insisted that he had not told the inspector of certain parts of the evidence which appears in his statement, in particular, those parts which assert that Aji (D3) had told D2 that he, Aji (D3), "had B$50,000 more". In another part of his statement, D2 also refers to this sum but testified that he did not say this.

Having admitted the statement, however, it is necessary for me to decide whether there is a case to answer. To do so, I take the statement as correct as it reads, even if I might, having heard the defence, have been inclined to give very little weight to it by reason of the defendants' ability to read and understand Malay being very limited, though he can manage his own signature.

The defendant was charged, both before he made his own statement and before me, with offences said to have taken place in April 1988. In order to establish those offences, contrary either to s. 489(B) or s. 489(C), the prosecution must show, in each case, that the defendant knew or had reason to believe the notes to be forged.

The statement shows that D2 was in possession, in April of last year, of a substantial sum of forged Brunei currency, which he had received from Aji bin Razak (D3).

But I can see in it nothing which suggests that the defendant, in April, when he was in possession of the notes, knew them to be forged, or had reason to do so. It has been argued that, because he admitted that he was also informed that Aji had B$50,000 more, he must necessarily have concluded, as a reasonable man, that all the notes were forged. I do not consider that this is not necessarily so, as there is no evidence of the financial standing of either D1 or D3.

It is said (and I accept this) that suspicion or doubt is not enough to attach liability under either section, and that neither of these is the same as knowing or having reason to believe.

There is no other evidence that D2 knew, or had reason to believe, that the notes were counterfeit. In particular, there seems to have been a gap of some weeks between the time at which D2 was said to have been in possession of the forged currency and its subsequent discovery in the hands of D1 and D3 on 14 and 15 May 1988.

I do not think, therefore, that it would be proper to rule that there is any evidence that D2 knew or had reason to believe, at the time in April when he was alleged to be in possession of them, that the notes which he had were forged, or that he should be called upon to make his defence to either of the charges against him.

I must rule that this defendant has no case to answer on either of the two charges and I discharge him accordingly.

Sentence

(First and third defendants only)

The distribution of forged currency, even though it may not be of a very high standard, is necessarily a serious matter. This can be seen from the maximum sentences of 15 years' imprisonment under s. 489(B) of the Penal Code, and 7 years' imprisonment under s. 489(C) of the Penal Code.

D1, who was not represented, pleaded guilty to a charge of receiving B$3,900 in forged B$100 Brunei notes, contrary to s. 489(B). The prosecutor offered no further evidence on an offence, contrary to s. 489(C), with which D1 was also charged.

According to the facts, which were put forward on behalf of the Public Prosecutor, D1 was arrested on the evening of 14 May at which time he was a passenger in a car, driven by a police officer in plain clothes, with a police informer as the other passenger. When arrested, the defendant was in possession of the forged Brunei notes alleged in the charge.

According to him, he did not know what he was to receive for distributing the notes. However, it seems to me that he must have known this, since he knew, when he received them, that these notes were forged ones.

I give proper credit to the defendant for the fact that he has no previous convictions; that he was only 23 at the time of the offence; that he has been of assistance to the police and pleaded guilty from the outset; and that he has expressed considerable remorse. I note that he had been in Brunei for about 4 years, at the time of this offence, with apparently no proper work permit, although he had been working as a labourer at B$35 a day.

In spite of the lesser part, which this defendant has played, it is necessary to remember the seriousness of the offence to which he has pleaded guilty, and of the fact that the dissemination of forged currency is unlikely to be effective, unless assisted by persons, like the defendant, who are willing to distribute the notes. Because I think that the part which he played is a lesser one, compared with that of D3, I consider that a sentence of 2½ years' imprisonment is appropriate. This should run from the date of his arrest.

I must view the conduct of D3 in a more serious light, although he is a man with no previous convictions, aged about 35 at the time of the offence.

Like D1, he is a citizen of Malaysia. He has been in Brunei since 1980. He also assisted the police, pointing out where the sack of forged currency was to be found near his house, when they arrived on the evening of 15 May. He immediately made a statement to the police, in which he disclosed the extent of his involvement in these offences and pleaded guilty at the earliest opportunity. He has shown a genuine remorse for the offences charged against him.

According to D3, it was his task to arrange for the exchange of the forged notes with genuine ones, for which he would receive twenty cents in the dollar.

He was first approached in Sabah, Malaysia, by a man called Jamiah in March of this year, and had brought back with him, to Brunei Darussalam, a very substantial quantity of forged currency notes, which were found in his possession on 15 May. He fully admitted that the attempt to get rid of the B$3,900 was the first transaction involving forged currency in which he had been involved.

It would appear that no other notes, except those in the possession of the defendants, have so far been discovered. Thus, if D3 is to be believed, the forgery of the Brunei notes took place in Sabah and not in Brunei Darussalam itself.

D3 was found in possession of B$52,640 in B$100 and B$10 Brunei currency notes, and can, perhaps, be said to have been fortunate in being charged only under s. 489(C) of the Penal Code. Even making due allowance for the various factors which I have mentioned, I cannot overlook the fact that this defendant was in possession of a very large amount of forged currency, which he had brought into Brunei from abroad with the object of profiting from this.

It is essential that the Brunei currency shall be protected, and a proper sentence, in my view, for this serious offence, is one of 4½ years' imprisonment, to run from the date on which he was arrested, in 1988.

Also found at [1989] 2 CLJ 285